
(1969) 02 MAD CK 0046
In the Madras High Court

The Coimbatore District Central Co-operative Supply and
Marketing Society Ltd.

APPELLANT

Vs

The Union of India (UOI) and Another

RESPONDENT

Date of Decision : 28-02-1969

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80

Citation : (1969) 82 LW 451 : (1969) 2 MLJ 602

Hon'ble Judges : K.S. Palaniswami, J

Bench : Division Bench

Judgement

K.S. Palaniswami, J.—The unsuccessful plaintiff before the lower Court, the Coimbatore District Central Co-operative Supply and Marketing Society Ltd., is the revision petitioner. The plaintiff-society was acting as Stockists for manure on commission on behalf of the State of Madras, the second respondent herein. On 27th August, 1963, the Assistant Director, Clearance, Madras, despatched to the plaintiff-society certain quantity of Ammonium Sulphate. When the plaintiff-society wanted to take delivery of the goods at Coimbatore, the Station Master at Coimbatore demanded Rs. 1,041-30 nP. as being under charges, demurrage and other charges. The plaintiff-society paid it under protest and called upon the railway to refund the amount. As the claim was not met, the plaintiff-society instituted the suit impleading the Union of India, owning the Southern Railway as the first defendant and the State of Madras as the second defendant and prayed for a decree for Rs. 1,221-30 nP.

2. The first defendant, Union of India, contended that the consignment had not been charged correctly at the forwarding station, there being an undercharge of Rs. 1,034-40 nP. that on-discovery of some excess collection made subsequently, the said excess collection of Rs. 41-50 nP. was refunded to the plaintiff, that the plaintiff-society was not entitled to claim a refund of the undercharges and that, there was no valid notice u/s 80, Civil Procedure Code. The State of Madras, the second defendant, contended that the plaintiff was not entitled to claim any

reimbursement and that the plaintiff did not act as the agent of the State of Madras.

3. The Subordinate Judge, Coimbatore, held that the notice issued by the plaintiff-society u/s 80, Civil Procedure Code, under the original of Exhibit A-13 on 25th October, 1965 was not a valid notice satisfying the requirements of Section 80, Civil Procedure Code, and that as such the suit was not maintainable. He also found that inasmuch as the property in the goods, in respect of which the plaintiff-society paid undercharges to the Railway, did not pass to the plaintiff-society, the plaintiff-society was not entitled to maintain the suit. On the question as to who among the defendants was liable, the trial Judge found that under the terms of the agreement between the plaintiff-society and the State of Madras, the plaintiff-society was entitled to recover from the second defendant, the State of Madras, whatever amount was legally paid in respect of the consignment on account of undercharges. In the result, he dismissed the suit without costs.

4. The first question that arises for consideration is whether the notice, Exhibit A-13, is in conformity with the requirements of Section 80, Civil Procedure Code. It is not in controversy that when the plaintiff-society wanted to take delivery of the goods, the railway authorities at Coimbatore demanded payment of certain charges as a condition precedent for the delivery of the goods. The plaintiff-society accordingly paid Rs. 1,041-30 and obtained the receipt, Exhibit A-1, dated 30th August, 1963. That receipt gives the details that go to make up the sum of Rs. 1,041-30. It is stated therein that (1) a sum of Rs. 1,034-40 represented freight including terminals; (2) Rs. 4-10 represented demurrage and (3) Rs. 2-80 represented other charges. After making this payment, the plaintiff-society addressed the Chief Commercial Superintendent, Southern Railway, under the letter Exhibit A-2, on 5th September, 1963, with a copy marked to the Collector of Coimbatore and the Secretary, Board of Revenue, Madras, stating that the society had to pay Rs. 1,041-30 by way of undercharges, etc. and that the society was entitled to be reimbursed. The Collector of Coimbatore took up the matter with the railways and wrote some communications, copies of which are Exhibits A-4 to A-7, requesting that the claim of the plaintiff-society may be satisfied. As the claim was not satisfied, the plaintiff-society issued the suit notice Exhibit A-13 in common to both the defendants setting out that a sum of Rs. 1,041-30 had to be paid under the circumstances stated above and calling upon both the defendants to pay the amount with interest and also stating that if amount was not paid within two months from the date of the receipt of the notice, a suit will be instituted against both the defendants. In paragraph 3 of that notice it is alleged that the goods station master refused to deliver the goods stating that the plaintiff-society should pay Rs. 1,041-30 towards demurrage and wharfage charges before taking delivery of the goods. There is a slight inaccuracy in this statement. The said sum of Rs. 1,041-30 did not represent in entirety the demurrage and wharfage charges. That amount comprised of undercharges, demurrage and other charges. Thus, the notice omitted to refer to undercharges. In paragraph 4 of the notice it is alleged that a sum of Rs.

1,041-30 was wrongly collected by the Station Master. In paragraph 6 of the notice, in which a demand for payment was made, no reference is made to demurrage, wharfage or undercharges. There is only a general statement as regards the amount which was required to be paid.

5. The contention urged on behalf of the first respondent, Union of India, which found favour with the lower Court is that demurrage and wharfage charges were payable only by the plaintiff-society and that if at all the plaintiff-society was entitled to claim reimbursement in respect of any amount, it was only in respect of undercharges, which was omitted to be collected from the State of Madras at the forwarding station and that in as much as the suit notice did not refer to undercharges, it was defective. I am of the view that this contention cannot be sustained. It is true that the terms of Section 80, Civil Procedure Code, should be strictly construed. But, as pointed out by the Supreme Court in *Dhian Singh Sobha Singh and Another Vs. The Union of India (UOI)*, , the terms of the notice should not be scrutinised in a pedantic manner or in a manner completely divorced from common sense. In *Union of India (UOI) Vs. Jeewan Ram*, , in the notice issued u/s 80, Civil Procedure Code, the relief claimed was thus expressed:

That my said client is entitled to be reinstated on his former post, and to be paid the amount due to him on the basis of his being treated as if he was not discharged from the date of his discharge upto the date of re-instatement.

6. In the plaint, the main relief claimed was a declaration that the order of discharge or removal of the plaintiff was illegal and arbitrary. The question arose whether the variation between the allegations in the notice and the plaint was such as to render the notice invalid. Their Lordships, after examining the substance of the notice and the plaint, held that there was no substantial difference between the relief mentioned in the notice and the relief claimed in the plaint and that, therefore, the notice was not invalid. In *Venkatammakrtihnaiyer v. Secretary of State for India-in-Council* 23 L.W. 464, the suit notice referred to only one declaration whereas in the suit the plaintiff prayed for more than one declaration in respect of the same land. It was held that the notice was substantially sufficient to satisfy the requirements of Section 80, CPC . In *Wallu Ram Vs. Union of India (UOI)*, the notice u/s 80, Civil Procedure Code, did not give the details of the claim. The plaintiff made a claim in the suit notice for a certain amount upto a particular period. In the suit the claim was made for some period subsequent to the notice also. It was held that the mere fact that the notice did not give all the details of the claim made in the plaint would not render it invalid, if it otherwise substantially complied with the requirements of Section 80, Civil Procedure Code. In *Bhagwan Lal Vs. Union of India(UOI) and Others*, , the notice u/s 80, Civil Procedure Code, gave a particular description about the identifying number of the railway receipt. But in the suit a different number was given. It was found that due to accidental and bona fide mistake a wrong description of the number was given in the notice. It was held that notwithstanding the said lacuna, the notice was not invalid.

7. On behalf of the respondents, reliance is placed upon a decision of the Rajasthan High Court in *Ramanand Vs. Union of India (UOI)*, . In that case, the notice merely stated that if a particular order was not made within two months from the date of receipt of the notice, the plaintiff would take legal steps to obtain the required redress of his grievance as he may be advised. In construing the terms of the notice, the Court held that it was defective as it did not conform to the requirements of Section 80, Civil Procedure Code, as no relief which the plaintiff proposed to ask for was indicated in the notice as required u/s 80, Civil Procedure Code. In *Konnoth Meenakshi Amma Vs. Province of Madras and Others*, , the notice referred to the subject-matter as a property bearing R.S. No. 722/4-B. But the plaint referred to the property as R.S. No. 722 /4-A. It was held that the error was not merely clerical but was substantial, vitiating the notice. These two decisions are hardly applicable to the facts of the instant case.

8. The subject-matter of the controversy between the parties in this case was only with regard to one consignment. The plaintiff-society made payment under three heads, but referred to only two heads in the preamble portion of the notice, but made no reference to any of the heads in making the claim for refund in the subsequent portions of the notice. All that the plaintiff-society required was refund of the amount, which, according to the plaintiff-society was illegally collected from it. Therefore, the absence of reference to under-charges in the preamble does not render the notice invalid.

9. The lower Court was wrong in dismissing the suit even as against the second defendant, State of Madras, for in the written statement filed by the State of Madras, no objection was taken with regard to the validity of the notice. As pointed out by the Supreme Court in *Dhian Singh Sobha Singh and Another Vs. The Union of India (UOI)*, , there is justification for the inference that the State of Madras waived the objection, even if there was any defect in the notice.

10. The lower Court misconstrued the scope of the suit in holding that inasmuch as the property in the goods did not pass to the plaintiff-society, the suit was incompetent. The plaintiff-society did not seek to recover the amount on the basis that the property in the goods passed. The basis of the suit is one of reimbursement in respect of the amount which the State of Madras as the consignor should have paid at the place where the goods were consigned. To sustain such a claim, it is not necessary for the plaintiff-society, who merely acted as the agent of the State of Madras, to prove that it is the owner of the goods.

11. On the question of the liability of the defendants inter se, the lower Court found that on the terms of Exhibit A-8, the agreement between the plaintiff-society on the one hand and the State of Madras on the other, the State of Madras is liable. That finding is correct. That agreement provides that in case where the railway freight or any portion of it has not been previously paid, the stockholders shall pay the railway freight or any portion of it, take delivery of the consignment and prefer a claim for refund from the Collector or any officer

authorised by him in this behalf. This term clearly enables the plaintiff-society to claim refund from the State of Madras as regards the amount of undercharges which were omitted to be paid by the State of Madras at the time of consignment and which the plaintiff-society paid before taking delivery.

12. In the result, the revision petition is allowed so far as the second defendant, State of Madras, is concerned and the suit is decreed against the second defendant for Rs. 1,034-40 with interest thereon at six per cent. per annum from 30th August, 1963 with full costs in both the Courts. The revision petition as against the first defendant is dismissed, in the circumstances, without cost.